

# **Acquisition & Assistance Policy Directive (AAPD)**

From the Director, Office of Acquisition & Assistance

**AAPD No. 24-02** 

### Implementing FASCSA Orders

Issued: November 30, 2023

AAPDs provide information of significance to all Agency personnel and partners involved in the Acquisition and Assistance process. Information includes (but is not limited to): advance notification of changes in acquisition or assistance regulations; reminders; procedures; and general information. AAPDs may be used to implement new requirements on short notice, pending formal amendment of acquisition or assistance regulations. Each AAPD is effective as of the issuance date on its cover page unless otherwise noted elsewhere in the AAPD guidance; the directives remain in effect until the specified expiration date (if any) or M/OAA/Policy issues a recission.

This AAPD is:	New Re	eplaces:	
Category:	Acquisition	Assistance	PSCs
This AAPD applies to:	Solicitations	New awards	Existing awards
This AAPD precedes c	hanges to:		Modification required
FAR	AIDAR Other _		CFR No change to regulations
Clause/Provision:	New Provision/Cla	use Provided Hereir	n Available in GLAAS
Contains a deviation?	No Yes: #	effect	ive until:
	 Deborah Broderick	k, Acting Director, M	/OAA

#### I. Purpose

The purpose of this AAPD is to provide guidance to the USAID acquisition workforce regarding the interim rule "Implementation of Federal Acquisition Supply Chain Security Act (FASCSA) Orders" (FAR Case 2020-011). Effective December 4, 2023, this rule creates a new Subpart 4.23 ("Federal Acquisition Security Council") with requirements for agencies, as well as the following new solicitation provision and contact clauses with requirements for contractors:

- <u>FAR 52.204-28</u> ("Federal Acquisition Supply Chain Security Act Orders—Federal Supply Schedules, Governmentwide Acquisition Contracts, and Multi-Agency Contracts")
- <u>FAR 52.204-29</u> ("Federal Acquisition Supply Chain Security Act Orders—Representation and Disclosures")
- <u>FAR 52.204-30</u> ("Federal Acquisition Supply Chain Security Act Orders—Prohibition")

These additions to the FAR prohibit contractors from providing or using any covered article, or any products or services produced or provided by a source, if that covered article or source is subject to an applicable FASCSA order. These requirements address risks in supply chains by reducing or removing threats and vulnerabilities that may lead to data and intellectual property theft, damage to critical infrastructure, harm to Federal information systems, and other threats to national security.

The following terms used in this AAPD have the same definitions in FAR 4.2301: covered article, FASCSA order, intelligence community, national security system, reasonable inquiry, sensitive compartmented information system, and source.

This AAPD does <u>not</u> apply to assistance awards (e.g., grants, cooperative agreements, or grants under contracts) or personal services contracts (PSCs).

This AAPD is effective as of the issuance date on the cover page and continues in effect until rescinded.

#### II. Required Actions

Instructions for Contracting Officers (COs) are detailed below, with supplemental guidance found in **Section III** and an informational chart summarizing required actions available in **Attachment 1**.

- **A. Solicitations**: The following guidance applies to all solicitations except those for Federal Supply Schedules, Governmentwide acquisition contracts (GWACs), multi-agency contracts, and the orders against them:
  - New Solicitations: For all new standalone solicitations issued on or after December 4, 2023, COs must include the FAR 52.204-29 provision and FAR 52.204-30 clause. For all new solicitations for task or delivery orders issued on or after December 4, 2023, COs must include:
    - a. The FAR 52.204-29 provision, and
    - b. The FAR 52.204-30 clause, unless the indefinite-delivery contract already contains the FAR 52.204-30 clause.
  - ii. *Existing Solicitations:* No action is required for solicitations issued before **December 4, 2023**, or their resultant awards (unless the CO later exercises an option or extends the period of performance see Section B.ii.b below).
- **B. Contracts and Orders**: The following guidance applies to all contracts and orders except for those for Federal Supply Schedules, GWACs, multi-agency contracts, and orders against them:
  - i. New Contracts and Orders: For all new contracts, including indefinite-delivery contracts and orders, resulting from solicitations issued on or after **December 4**, **2023**, COs must include the FAR 52.204-30 clause. If the indefinite-delivery contract already contains the FAR 52.204-30 clause, then the CO must not include the clause at the order level.
  - ii. Existing Contracts, and Contracts Resulting from Solicitations Issued Prior to **December 4, 2023**:
    - a. <u>Existing Indefinite-Delivery Contracts</u>: For indefinite-delivery contracts awarded prior to December 4, 2023, COs must issue bilateral modifications to these contracts to include the FAR 52.204-30 clause as soon as possible, but no later than **June 3, 2024**.
    - b. Existing Contracts and Orders: For any existing contract or order as well as any contract or order resulting from a solicitation issued prior to December 4, 2023 no action is required unless a CO exercises an option or modifies the contract to extend the period of performance. In that event, the CO must issue a bilateral modification to include the FAR 52.204-30 clause if the award does not already contain the clause. The CO

must not exercise the option or extend the period of performance unless the FAR 52.204-30 clause is added into the contract.

When exercising an option, COs should modify the existing contract to add the clause in a sufficient amount of time to both provide notice for exercising the option and to provide contractors with adequate time to comply with the clause.

- C. Federal Supply Schedules, GWACs, and Multi-Agency Contracts: For these types of indefinite delivery vehicles (IDVs) (which are typically awarded by other agencies, such as GSA), the CO must follow the requirements in FAR 4.2304(b). An agency awarding this type of vehicle (such as GSA) may decide to apply FASCSA orders at the basic contract level or the task order or delivery order level.
  - If applied at the basic contract level:

The agency awarding the basic contract may choose to apply all FASCSA orders to the contract by including the provision at FAR 52.204-29 in the solicitation and FAR 52.204-30 with its Alternate I in the solicitation and resultant basic contract. In accordance with FAR 4.2304(b)(i), the agency awarding the basic contract will check the "yes" boxes for all three FASCSA order types (DHS, DoD, DNI) in Paragraph (b)(1) of Alternate 1, meaning that all types of FASCSA orders apply to the contract and orders issued against it.

GSA plans to apply FASCSA orders at the basic contract level for all GSA-managed indefinite delivery vehicles no later than June 4, 2024.

• If applied at the order level:

The agency awarding the basic contract may choose to apply FASCSA orders at the order level, meaning the designation of applicable FASCSA orders is implemented by USAID's ordering CO. Where FASCSA orders are applied at the order level, the Agency awarding the basic contract inserts the clause at 52.204-28 in the solicitation and resultant basic contract. This clause provides contractors with notice that FASCSA orders will be identified in the solicitation or in the notice of intent to place an order.

Actions for USAID's Ordering COs under Federal Supply Schedules, GWACs, and multi-agency contracts:

- i. New solicitations and new orders: Before issuing a solicitation or order, USAID's ordering CO must review the basic contract to determine the approach to FASCSA orders:
  - a. If FAR 52.204-30 Alternate I is in the basic contract, USAID's ordering CO does not need to take any further action. The CO must not insert FAR 52.204-30 or further identify applicable FASCSA orders in the solicitation, notice of intent to place an order, or any resulting order.
  - b. If **FAR 52.204-28** is in the basic contract, USAID's ordering CO must insert FAR 52.204-30 with its Alternate II in the solicitation, notice of intent to place an order, and any resulting order. USAID's ordering CO must check the appropriate boxes in Paragraph (b)(1) of Alternate II to indicate which FASCSA orders apply, as described in **Section III.C** below. The CO must also include the FAR 52.204-29 provision in the solicitation.
  - c. If **neither** FAR 52.204-28 nor FAR 52.204-30 is in the basic contract, USAID's ordering CO must insert the basic FAR 52.204-30 clause in the solicitation and any resulting order.
- ii. Existing orders: For any existing order as well as any order resulting from a solicitation issued prior to December 4, 2023 in the event that a CO exercises an option or modifies the contract to extend the period of performance, the CO must issue a bilateral modification to include the basic FAR 52.204-30 clause, if the award does not already contain the clause.
- D. Purchase Card Micro-Purchases: Purchases made at or below the micro-purchase threshold are subject to the prohibitions described in FAR Subpart 4.23 and FAR 52.204-30. Purchase cardholders may not acquire any covered article, or any products or services produced or provided by a source, subject to a DHS FASCSA order. Purchase cardholders are reminded to follow the order of precedence and the requirements for purchases of information technology supplies and services (see ADS 331) to minimize the risk of accidentally purchasing a product or service subject to a FASCSA order.

#### III. Additional Guidance

- **A. Applicability of this AAPD**: The requirements in this AAPD are applicable to all solicitations and contracts including contracts at or below the simplified acquisition threshold (SAT), as well as contracts for commercial products, commercial services, and commercially available off-the-shelf (COTS) items.
- B. Applicability of FASCSA orders issued after the date of the solicitation: Only the applicable FASCSA orders in effect on the date the solicitation is issued will be incorporated in the resulting contract, unless a newer FASCSA order is added by an amendment to the solicitation or modification to the contract. The CO is not required to modify the contract to incorporate FASCSA orders issued after the solicitation date, unless otherwise instructed by the M/OAA Director in consultation with the Chief Information Officer (CIO). If applicable, this AAPD will be revised to provide guidance on applying new FASCSA orders.
- C. Alternates I and II to FAR 52.204-30: In many solicitations and contracts issued by USAID, only DHS FASCSA orders will apply under the basic clause found at FAR 52.204-30, as USAID is a civilian agency. However, a CO may use Alternates I or II to FAR 52.204-30 to apply DoD or DNI orders in certain scenarios.

Alternate I is for use in solicitations and contracts (except for orders issued against Federal Supply Schedules, GWACs, and multi-agency contracts) when DoD or DNI orders must be applied as described below.

Alternate II is for use in orders issued against Federal Supply Schedules, GWACs, and multi-agency contracts, when FASCSA orders apply at the order level due to the inclusion of FAR 52.204-28 in the basic contract.

When Alternate I or II is used, the CO must select "yes" or "no" for each applicable type of FASCSA order (DHS, DoD, and/or DNI) in Paragraph (b)(1). COs must select "yes" as follows:

- DHS orders: The CO must always select "yes" for DHS orders if any USAID or other civilian agency funding is involved in the procurement.
- ii. **DoD orders**: The CO must select "yes" for DoD orders if the procurement involves interagency funding from DoD or the acquisition of a national security system other than sensitive compartmented information system.

iii. **DNI orders**: The CO must select "yes" for DNI orders if the procurement involves interagency funding from the intelligence community or the acquisition of a sensitive compartmented information system.

Note: For Federal Supply Schedules, GWACs, and multi-agency contracts where FASCSA orders apply at the basic contract level, all types of FASCSA orders (DHS, DoD, and DNI) will apply to the contract at the basic contract level and therefore to all resulting orders.

- **D. FASCSA orders issued outside of SAM**: As noted in FAR 4.2303(c)(2), some FASCSA orders will not be identified in SAM.gov and will need to be identified in the solicitation and resulting contract in order to be incorporated into an acquisition. In the event a FASCSA order is not identified in SAM and is applicable to a USAID acquisition, the M/OAA Director in consultation with CIO and GC will issue guidance regarding the implementation of that order.
- **E. Offeror representation and disclosures**: When responding to a solicitation containing the FAR 52.204-29 provision, the offeror must conduct a reasonable inquiry and determine whether it can represent (by submission of an offer) that it does not propose to provide or use in response to this solicitation any covered article, or any products or services produced or provided by a source, subject to a FASCSA order. If the offeror cannot represent compliance, they must provide a disclosure as part of their offer with the information required by FAR 52.204-29(e).

In the event the offeror submits a disclosure, the CO must forward the disclosure to the requiring activity and the M/CIO Supply Chain Risk Management (SCRM) team (ITAuthorization@usaid.gov, with the Subject: SCRM FASCSA) for awareness. In reviewing the disclosure, the CO – with input from the requiring activity – must determine one of the following actions in accordance with FAR 4.2305(d):

- i. The CO may award to an offeror who has represented compliance and does not require a waiver; or
- ii. The CO may decide to pursue a waiver. In this case, the CO must not award the contract until and unless a waiver is approved. See **Section III.H** below for more information on requesting waivers.
- **F.** Contractor reporting requirements: In accordance with FAR 52.204-30(c), the contractor is required to submit a report to the CO once they become aware that a covered article or product or service subject to a FASCSA order has been delivered

to the Government or used in performance of the contract. This reporting requirement applies not just to covered articles or services prohibited by FASCSA orders incorporated or modified into the contract, but also to new FASCSA orders not incorporated into the contract.

As an example, for a solicitation issued on July 1, 2024 that contains the basic FAR 52.204-30 clause:

- Which FASCSA orders apply to the contract? Only DHS orders will apply to the contract. DoD and DNI orders will not apply to the contract.
- Which FASCSA orders are incorporated into the contract? The DHS orders incorporated into the contract (by FAR 52.204-30) will be those DHS orders in effect as of July 1, 2024. New DHS orders issued after July 1, 2024 are not incorporated into the contract unless the solicitation is amended or the contract is modified to specifically add them.
- Which prohibitions apply to the contractor? Under FAR 52.204-30(b), the
  contractor is prohibited from providing or using as part of the performance of
  the contract covered articles or sources from the FASCSA orders
  incorporated into the contract (i.e., DHS orders in effect as of July 1, 2024).
- Which FASCSA orders must the contractor monitor and report on? Under FAR 52.204-30(c), the contractor is responsible for monitoring and reporting on all applicable FASCSA orders available in SAM (i.e., all DHS orders, even those issued after July 1, 2024) and not just FASCSA orders incorporated into the contract. The contractor is not responsible for monitoring or reporting on the DoD or DNI orders.
- **G. USAID procedures for contractor reports.** If the contractor submits a report under FAR 52.204-30(c), the CO must review each report with the COR to as follows:
  - i. Orders incorporated into the contract (Contractor has identified a covered article, or a product or service produced or provided by a source, subject to a FASCSA order under paragraph (b) of FAR 52.204-30 was provided to the Government or used during contract performance). The CO must work with the COR and based on consultation with GC and the M/CIO SCRM, to determine whether the covered article(s) or service(s) subject to an applicable FASCSA order:
    - a. Can be removed by the contractor; or
    - Cannot be removed and a waiver request will be requested (see Section III.H below for more information on requesting waivers) and approved; or

- c. Cannot be removed and a waiver request will not be requested or was requested and rejected, in which case the CO must consult with GC/A&A to determine the best way to proceed. This may include the need to terminate the contract using an applicable termination clause in accordance with FAR Part 49.
- ii. Orders not incorporated into the contract (Contractor has identified a covered article, or a product or service produced or provided by a source, subject to a new FASCSA order under paragraph (c)(2) of FAR 52.204-30 was provided to the Government or used during contract performance). The CO must forward the report as noted below.

In any instance, the CO must submit the report and analysis to the M/CIO SCRM team (ITAuthorization@usaid.gov, with the Subject: SCRM FASCSA) within 5 business days after receipt of the report from the contractor. The M/CIO SCRM team will provide a risk analysis to the CO regarding the information reported, for the CO's consideration.

Any reporting by USAID to the FASC is managed by M/CIO; individual COs must not report directly to the FASC.

- **H. Documentation**: The CO or COR must upload the following documents to ASIST: all FAR 52.204-29(e) disclosures received from offerors, and all FAR 52.204-30(c) reports received from contractors, as well as any resulting risk assessments provided by M/CIO.
- I. Waivers: In consultation with the requiring activity, the M/CIO SCRM team, and GC, the CO may decide to pursue a waiver in accordance with FAR 4.2305 and any applicable instructions found in the individual FASCSA order. The requiring activity is responsible for drafting the waiver request, which must be cleared by the CO, M/CIO, and GC. Any waiver request must address the elements of FAR 4.2305(c), including a compelling justification for why an exception should be granted. If a waiver is being pursued at the solicitation stage, then the CO may not make an award until the waiver has been approved. In the event the waiver is rejected, the award cannot be issued.
- J. Training Resources: The <u>Federal Acquisition Institute (FAI)</u> has developed an online training course, available in Cornerstone OnDemand (CSOD), entitled "FCS 101 Supply Chain Security Exclusion and Prohibitions" that covers FASCSA orders and other cyber-supply chain risk management (C-SCRM) topics.

### IV. Background

The Federal Acquisition Supply Chain Security Act (FASCSA) requires that agencies share certain supply chain risk information across the Federal Government, as well as comply with exclusion and removal orders recommended by the Federal Acquisition Security Council (FASC).

The FASC includes representatives from the Office of Management and Budget (OMB), General Services Administration (GSA), Department of Defense (DoD), Department of Homeland Security (DHS), Office of the Director of National Intelligence (ODNI), Department of Justice (DOJ), and Department of Commerce (Commerce). The FASC has the authority to recommend issuance of orders requiring removal of covered articles from information systems ("removal orders"), and orders excluding sources or covered articles from future procurements ("exclusion orders") that pose supply chain risks. This rule refers to both exclusion and removal orders as "FASCSA orders." Based on the recommendations from the FASC, the Secretary of Homeland Security, the Secretary of Defense, and the Director of National Intelligence can issue FASCSA orders, which are then posted to SAM.gov. The Secretary of Homeland Security issues FASCSA orders applicable to civilian agencies.

Recent FAR Case 2020-011 revised the FAR to create a new policy for acquisition of information technology at FAR 39.101(h): "Executive agencies are prohibited from procuring or obtaining, or extending or renewing a contract to procure or obtain, any covered article, or any products or services produced or provided by a source, including contractor use of covered articles or sources, if prohibited from doing so by an applicable FASCSA order issued by the Director of National Intelligence, Secretary of Defense, or Secretary of Homeland Security (see 4.2303)." In addition, it created a solicitation provision and contract clauses with new responsibilities for contractors, such as requiring contractors to represent at the proposal stage their compliance with applicable FASCSA orders, monitor applicable FASCSA orders posted to SAM.gov, adhere to FASCSA order requirements during contract implementation, and provide reports to the CO if they identify that a covered article or product or service subject to a FASCSA order was used or provided to the Government during contract performance.

The information-sharing requirements and implementation of FASCSA orders will help make Government supply chains and information systems more resilient and less subject to disruptions that could impact Government operations.

## V. Point of Contact

COs may direct their questions about this AAPD to the <u>Ask M/OAA Policy</u> Google Group.

## VI. Attachments

**Attachment 1**: Informational Chart for Contracting Officers

### **Attachment 1: Informational Chart for Contracting Officers**

The informational chart below is intended to guide COs on when to incorporate the new FASCSA-related FAR provision and clauses into solicitations and contracts, including indefinite delivery vehicles (IDVs) as defined at <u>FAR 4.606(a)(ii)</u>.

Type of Acquisition	CO's Required Action(s)	Deadline / Additional Notes
Solicitation for a standalone contract	<ul> <li>Incorporate the FAR 52.204-29 provision</li> <li>Incorporate the FAR 52.204-30 clause (or its Alternate I, if appropriate)</li> <li>If using FAR 52.204-30 (Alternate I), identify the applicable FASCSA orders</li> </ul>	Required for solicitations issued on or after December 4, 2023
New award of a standalone contract	<ul> <li>Incorporate the FAR 52.204-30 clause (or its Alternate I, if appropriate)</li> <li>If using FAR 52.204-30 (Alternate I), identify the applicable FASCSA orders</li> </ul>	Required for contracts resulting from solicitations issued on or after December 4, 2023
Existing standalone contract or contract resulting from a solicitation issued prior to December 4, 2023	<ul> <li>Issue a bilateral modification to incorporate the FAR 52.204-30 clause (or its Alternate I, if appropriate)</li> <li>If using FAR 52.204-30 (Alternate I), identify the applicable FASCSA orders</li> </ul>	Only required in the event the CO exercises an option or modifies the contract to extend the period of performance
Solicitation for a USAID-only IDV (including IDIQs and BPAs)	<ul> <li>Incorporate the FAR 52.204-29 provision</li> <li>Incorporate the FAR 52.204-30 clause (or its Alternate I, if appropriate)</li> <li>If using FAR 52.204-30 (Alternate I), identify the applicable FASCSA orders appropriate to the IDV and all orders against it</li> </ul>	Required for solicitations issued on or after December 4, 2023  Required via amendment for solicitations issued before December 4, 2023 where the resulting IDV will be awarded on or after December 4, 2023. When amending a closed solicitation issued prior to December 4, 2023, do not include the FAR 52.204-29 provision; in addition, the CO must request each offeror who has not been eliminated from the competition confirm the validity of their proposal.

Type of Acquisition	CO's Required Action(s)	Deadline / Additional Notes
New award of a USAID-only IDV (including IDIQs and BPAs)	<ul> <li>Incorporate the FAR 52.204-30 clause (or its Alternate I, if appropriate)</li> <li>If using FAR 52.204-30 (Alternate I), identify the applicable FASCSA orders appropriate to the IDV and all orders against it</li> </ul>	Required for IDVs issued on or after December 4, 2023. (The solicitation should have already been amended, if needed, in accordance with the row above.)
Existing USAID-only IDV (including IDIQs and BPAs) awarded prior to December 4, 2023	<ul> <li>Issue a bilateral modification to incorporate the FAR 52.204-30 clause (or its Alternate I, if appropriate)</li> <li>If using FAR 52.204-30 (Alternate I), identify the applicable FASCSA orders appropriate to the IDV and all orders against it</li> </ul>	For IDVs awarded prior to December 4, 2023, COs must issue bilateral modifications as soon as possible, but no later than June 3, 2024.
Solicitation for a task/delivery order under a USAID-only IDV	If the IDV contains the FAR 52.204-30 clause, no further action is required.  If the IDV does not contain the FAR 52.204-30 clause:  Incorporate the FAR 52.204-29 provision Incorporate the FAR 52.204-30 clause (or its Alternate I, if appropriate)  If using FAR 52.204-30 (Alternate I), identify the applicable FASCSA orders appropriate to the order	Required for solicitations issued on or after December 4, 2023
New award of a task/delivery order under a USAID-only IDV	If the IDV contains the FAR 52.204-30 clause, no further action is required.  If the IDV does not contain the FAR 52.204-30 clause:  Incorporate the FAR 52.204-30 clause (or its Alternate I, if appropriate)  If using FAR 52.204-30 (Alternate I), identify the applicable FASCSA orders appropriate to the order	Required for orders resulting from solicitations issued on or after December 4, 2023
Existing task/delivery order under a USAID-only IDV, where the order resulted from a solicitation issued prior to December 4, 2023	Issue a bilateral modification to incorporate the FAR 52.204-30 clause (or its Alternate I, if appropriate)     If using FAR 52.204-30 (Alternate I), identify the applicable FASCSA orders appropriate to the order	Only required in the event the CO exercises an option or modifies the order to extend the period of performance

Type of Acquisition	CO's Required Action(s)	Deadline / Additional Notes
Solicitation for a task/delivery order under a Government-wide IDV (such a GSA contract)	If the IDV contains the FAR 52.204-30 (Alternate I) clause, no further action is required.  If the IDV contains the FAR 52.204-28 clause:  Incorporate the FAR 52.204-29 provision  Incorporate the FAR 52.204-30 clause with its Alternate II  Identify the applicable FASCSA orders in FAR 52.204-30 (Alternate II) appropriate to the order  If the IDV does not contain FAR 52.204-28 or FAR 52.204-30:  Incorporate the FAR 52.204-29 provision  Incorporate the FAR 52.204-30 clause (or its Alternate I, if appropriate)  If using FAR 52.204-30 (Alternate I), identify the applicable FASCSA orders appropriate to the order	Required for solicitations issued on or after December 4, 2023
New award of a task/delivery order under a Government-wide IDV (such a GSA contract)	If the IDV contains the FAR 52.204-30 (Alternate I) clause, no further action is required.  If the IDV contains the FAR 52.204-28 clause:  Incorporate the FAR 52.204-30 clause with its Alternate II  Identify the applicable FASCSA orders in FAR 52.204-30 (Alternate II) appropriate to the order  If the IDV does not contain FAR 52.204-28 or FAR 52.204-30:  Incorporate the FAR 52.204-30 clause (or its Alternate I, if appropriate)  If using FAR 52.204-30 (Alternate I), identify the applicable FASCSA orders appropriate to the order	Required for orders resulting from solicitations issued on or after December 4, 2023
Existing task/delivery order under a Government-wide IDV (such a GSA contract), where the order resulted from a solicitation issued prior to December 4, 2023	<ul> <li>Issue a bilateral modification to incorporate the FAR 52.204-30 clause (or its Alternate I, if appropriate)</li> <li>If using FAR 52.204-30 (Alternate I), identify the applicable FASCSA orders appropriate to the order</li> </ul>	Only required in the event the CO exercises an option or modifies the order to extend the period of performance